

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NANCY NEFF)
)
v.) No. 3:08-0081
) Judge Nixon/Bryant
SOCIAL SECURITY ADMINISTRATION)

REPORT AND RECOMMENDATION

Currently pending in this Social Security case are plaintiff's motion for judgment on the administrative record (Docket Entry No. 16) and defendant's motion for entry of judgment under sentence four, 42 U.S.C. § 405(g), with remand to defendant (Docket Entry No. 19). By seeking reversal of its final decision, defendant concedes the merit of plaintiff's lawsuit. Plaintiff, in turn, has filed a response to defendant's motion (Docket Entry No. 22) in which she agrees with defendant's proposal for action upon remand, including "to reevaluate Plaintiff's (1) obesity, (2) functional limitations, and (3) allow for the submission of any updated medical information that Plaintiff may have." Additionally, plaintiff in her motion for judgment (Docket Entry No. 16 at 11) had requested remand for a rehearing of her case by the Administrative Law Judge. See, e.g., Shalala v. Schaefer, 509 U.S. 292, 297 n.1 (1993)(quoting sentence four's allowance for reversal "with or without remanding the cause for a rehearing.") While defendant's proposal of post-remand proceedings does not specifically include its intention to

rehear the matter, such a rehearing appears to be contemplated by the proposed reevaluation of functional limitations and updated medical information.

Accordingly, in light of the agreement of the parties, the undersigned Magistrate Judge recommends that the agency decision be REVERSED and the cause REMANDED for further administrative proceedings as outlined above and in defendant's memorandum, with the additional instruction that such proceedings include rehearing.

Any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to it with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985); Cowherd v. Million, 380 F.3d 909, 912 (6th Cir. 2004)(en banc).

ENTERED this 4th day of September, 2008.

s/ John S. Bryant
JOHN S. BRYANT
UNITED STATES MAGISTRATE JUDGE